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Misc. No.:_____

IN THE UNITED STATES SUPREME COURT

JONATHAN KEITH IDEMA,

Petitioner,

Versus

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

J. KEITH IDEMA
PETITIONER APPEARING *PRO SE*
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48 pp

QUESTION PRESENTED FOR REVIEW

DOES THE ORDER OF A TRIAL COURT WHICH PROVIDES FOR PAYMENT OF FULL RESTITUTION IMMEDIATELY BY AN INDIGENT DEFENDANT, FOUND HISTORICALLY TO BE INDIGENT WITHOUT ENTRY OF APPROPRIATE FINDINGS AS REQUIRED 18 U.S.C. 3664 (a) et seq. CONSTITUTE AN ABUSE OF DISCRETION WHICH OFFENDS DUE PROCESS OF LAW PARTICULARLY WHERE A RESENTENCING HEARING WAS NOT CONDUCTED AS REQUIRED BY FEDERAL RULES OF CRIMINAL PROCEDURE RULE 43(a) AND DUE PROCESS OF LAW?

PARTIES TO THIS ACTION

Jonathan Keith Idema - Petitioner Pro Se

John Bowler, AUSA - Government Counsel

Solicitor General of the United States

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

COMES NOW, Petitioner, Jonathan Keith Idema, appearing pro se, who respectfully petitions this Court to grant a writ of certiorari to review a decision as entered by the United States Court of Appeals for the Fourth Circuit.

THE DECISIONS BELOW

The decision of the United States Court of Appeals for the Fourth Circuit, which is sought to be reviewed in this within matter was entered on December 15th, 1999, which affirmed an order of the United States District Court for the District of North Carolina, Western Division, in a criminal matter.

A copy of the decision and unpublished order of the Court of Appeals for the Fourth "Circuit is attached hereto and is incorporated as a part hereinafter as appendix exhibit "A", infra. The decision is not presently tabled reported.

A copy of the order as entered by the United States District Court for the district of North Carolina, Western Division, which was the subject of the decision entered below by the United States Court of Appeals for the Fourth Circuit is annexed hereto and incorporated as a part hereof as Appendix exhibit "B", infra.

An earlier appeal to the Court of Appeals for the Fourth Circuit which had remanded the original criminal matter to the District Court below, The United States District Court for the Eastern District of North Carolina, for resentencing in that Court and which is unpublished in attached hereto and incorporated as appendix exhibit "C", infra. This decision was table reported at 83 F.3d 416 (4th Cir. 1996) [Glosson].

JURISDICTION OF THIS COURT

This Court has jurisdiction pursuant to 28 U.S.C. 1254(1), Rule 10(a) and 13.1 and the Constitution of the United States. Further this is a timely petition brought within 90 days of the entry of the order sought to be reviewed as entered by the Court of Appeals, such order having been entered on December 15, 1999.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V- United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI – United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Rule 43 (a) – Federal Rules of Criminal Procedure

Rule 43. Presence of the Defendant

(a) Presence Required. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

18 USC 3664(a)

Sec. *3664*. Procedure for issuance and enforcement of order of restitution

(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

STATEMENT OF THE CASE and STATEMENT OF FACTS

On April 27, 1993, Jonathan Keith Idema was named with his wife, Patricia Dawn Glosson, in a 59-count superseding indictment returned by an Eastern District of North Carolina federal Grand Jury. Count 1 charged Mr. Idema with Conspiracy to Commit Wire Fraud in violation of 18 USC Section 371 and 18 USC Section 1343. Counts 2 through 59 charged Mr. Idema with Wire Fraud and Aiding and Abetting Wire Fraud in violation of 18 USC Section 1343 and 18 USC Section 2.

Following their first trial in May of 1993, Mrs. Idema was found not guilty on the conspiracy count. Mr. Idema's trial resulted in a hung jury, which had voted 11 to 1 in favor of acquittal. Upon retrial, Mr. Idema was found guilty on March 14, 1994 on Counts 1 through 59 of the superseding indictment. His wife was found guilty of aiding and abetting wire fraud. On August 25, 1994, Mr. Idema's wife was sentenced to a term of 15 months

imprisonment in the United States Bureau of Prisons. Mr. Idema was sentenced on April 11, 1995 to 48 months imprisonment and ordered to pay $200,000 restitution. (R. 150, App. At 40-49.)

Since that time, numerous post-trial motions and appeals have been taken. Relevant here is only the direct appeal of Mr. Idema's convictions. In this appeal, all issues were denied except Mr. Idema's claim that there was no factual basis for the restitution order. With respect to this order, the Fourth Circuit remanded the case and ordered the District Court to make requisite factual findings.

Following remand from the Fourth Circuit, Mr. Idema was contacted by the Probation Office and asked to sign forms that would allow the Probation Office to review Mr. Idema's credit report and investigate any confidential financial matters. Mr. Idema refused to waive his constitutionally protected right to privacy. Neither the U.S.

Attorney's Office, the District Court or the Probation Office was able to cite any statutory authority that would have required Mr. Idema to waive this right.

Eventually the District Court ordered the government to file a memorandum of its position with respect to Mr. Idema's restitution. In this memorandum, the government requested that Mr. Idema be ordered to pay as large of a restitution amount as possible. Apparently upset that someone convicted of a crime could believe that he had been wrongly convicted, the government states that Mr. Idema, **"remains devoid of all contrition or remorse and determined to avoid any and all responsibility for his conduct. It would thus be a happy and just result if restitution, if not paid, haunted him for the rest of his life." [Emphasis Added]**

Mr. Idema then requested an extension of time to respond to the government's position memorandum. The government responded to this motion for extension with

the accusation that this request was but one more in a long line of frivolous motions. This accusation was unfounded, as no motion ever filed by Mr. Idema has ever been ruled frivolous.

The District Court then denied Mr. Idema's request for an extension of time and stated that,

"The Court finds that defendant's conduct throughout this process has been abusive and uncooperative. Defendant has repeatedly refused to assist the government in determining a fair and equitable monetary sanction. His patterns of prior frivolous motions have impeded the efficient functioning of the judicial process and the defendant has seized every opportunity to further perpetrate this pattern of conduct. Defendant is not entitled to the benefit of discretionary treatment by the Court at this juncture."

Apparently, the Court did not consider that Mr. Idema may have been innocent, even though a New Trial

Motion has been pending for over five years, and was simply maintaining a consistent position with respect to that belief, and that he did not want the government rummaging through his personal financial matters with absolutely unfettered discretion, and further slandering him to uninvolved persons.

Mr. Idema subsequently filed a responsive memorandum presenting his position with respect to any restitution order. On January 11, 1999, the District Court reimposed the original restitution amount of $200,000 with only a cursory referral to the language required by 18 U.S.C. Section 3664(a). The Court further required that the amount be paid immediately and in one lump sum. The court below affirmed in a summary order [See exhibit #A, infra].

REASONS FOR GRANTING THE WRIT

The decision of the United States Court of Appeals for the Fourth Circuit, below, which affirmed an order of the trial court which imposed a $200,000.00 restitution to be paid **immediately**, particularly in the absence of resentencing proceedings, with the presence of the Defendant and absent sufficient findings to support such order offends due process of law.

Additionally, the decision of the Fourth Circuit Court of Appeals is also at a variance with the decisions as reached by the United States Court of Appeals for the Second Circuit in United States v. Porter, 90 F.3d 64, 69 (2nd Cir. 1996) and the United States Court of Appeals for the Tenth Circuit as reached in United States v. Rogat, 924 F.2d 983, 985 (10th Cir. 1991), which hold that such restitution orders violate due process of law and are unconstitutional, when full findings are not made.

The decision of the Fourth Circuit Court of Appeals also conflicts with the decision of United States v. Mortimer, 52 F.3d 429, 436 (2nd. Cir. 1995), which holds that a trial court abuses it's discretion when it imposes what amounts to full restitution payment immediately when the record shows that a defendant is indigent.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

DOES THE ORDER OF A TRIAL COURT WHICH PROVIDES FOR PAYMENT OF FULL RESTITUTION IMMEDIATELY BY AN INDIGENT DEFENDANT, FOUND HISTORICALLY TO BE INDIGENT, WITHOUT ENTRY OF APPROPRIATE FINDINGS AS REQUIRED 18 U.S.C. 3664 (a) et seq. CONSTITUTE AN ABUSE OF DISCRETION WHICH OFFENDS DUE PROCESS OF LAW PARTICULARLY WHERE A RESENTENCING HEARING WAS NOT CONDUCTED AS REQUIRED BY FEDERAL RULES OF CRIMINAL PROCEDURE RULE 43(a) AND DUE PROCESS OF LAW?

INTRODUCTION

After a trial to jury, the Petitioner and his co-defendant wife were convicted of 59 Counts of Wire Fraud and Conspiracy to Commit Wire Fraud. [See exhibit "D" a copy of the sentence and judgment as originally entered by the District Court on April 11, 1995 which sentenced the Petitioner to 48 months confinement and immediate restitution in the amount of $200,000 the estimated loss involved.]

On appeal in an unreported decision by the United States Court of Appeals for the Fourth Circuit the Court below ordered that the Petitioner be resentenced on the restitution portion of the sentence, due to the failure of the trial court to make required findings as required by 18 U.S.C. 3663 et seq. at the time of the original sentencing restitution order. That appeal of the petitioner had been prosecuted in the Court of Appeals below *in forma*

pauperis after a finding of indigency of the Petitioner. [See exhibit "C" infra, decision of Court of Appeals].

The trial court on remand did not conduct a resentencing hearing, rather it entered an order without any proceedings before it other than written submissions and again without making required findings reimposed the $200,000 restitution order, further ordering it effective forthwith. [See exhibit "B" Order of the District Court below.]

The Court of Appeals in a summary affirmance order affirmed the order of the District Court below in a summary order as entered on December 15, 1999. [A copy of that order is attached hereto as exhibit "A"] That order conflicts with decisions as entered by two other circuits.

ARGUMENT

The pertinent provisions of the Rule 43(a), Federal Rules of Criminal Procedure provides as follows:

"[t]he defendant shall be present at every stage of the trial . . . and at the imposition of sentence. . ." [EMPHASIS ADDED]

The cases generally hold that a defendant has an absolute constitutional right to be present at the resentencing stage of the criminal proceedings unless that right is waived. United States v. Ammar, 919 F.2d 13, 17 (3rd Cir. 1990). This Petitioner did not waive that right and such a hearing was not conducted.

The trial court below expressly refused to conduct a hearing or resentencing proceeding, and indeed, after receiving written submissions from the parties involved, the government and the Petitioner entered the forthwith restitution order reimposing $200,000 restitution which was the subject of the appeal in this Court of Appeals below.

The failure of the Trial Court to conduct a hearing offended the fifth and sixth amendment rights of the petitioner initially. Additionally the order of the District court below, as affirmed by the court of Appeals below further offends due process of law, as the requisite findings required by law 18 U.S.C. 3663-64, et seq. were not made by the trial court, prior to the Entry of Order.

The record in this matter shows inter alia that the litigation of the initial appeal was made *in forma pauperis* after trial court findings that the Petitioner was indigent. Petitioner, as the record show, remains an indigent and unable to pay the costs of restitution forthwith in one lump sum, which is the manner in which the trial court order it to be paid.

It was initially an abuse of discretion for the trial court to order that the full amount of the $200,000 restitution to be paid immediately on the facts of this record and secondly for the Court of Appeals to affirm the

trial court order such a restitution figure. The record in this matter, conclusively establishes that the Petitioner is unable to pay such a forthwith amount because of his historical impecunious status. Their decision also offends due process of law, and establishes a conflict with at least two other circuits.

The Second Circuit and the Tenth Circuit have held in instances where the operative facts approximated that the circumstances of this Petitioner, that the imposition of a forthwith and exceedingly large restitution order upon a defendant who lacks the ability or present means to make the restitution order payment in full is completely unrealistic as a matter of fact and law. United States v. Porter, 41 F.3d 72 at pp. 73 [Expressing the views that imposing a forthwith large restitution amount upon an impecunious defendant was "flatly inconsistent" with Congressional intent.]

The Second Circuit in a second appeal once again held that the restitution statue, in the instance of imposition of large amount of restitution being ordered to be paid forthwith was in violation of due process as the statute "did not authorize amounts that cannot be paid without Hollywood miracles." Porter, II., 90 F.3d 64 pp. 69. The Court of Appeals for the Tenth Circuit has agreed, holding in a similar case that "we will not put the court in the lottery business." United States v. Rogat, 924 F.2d 983, 985 (10th Cir. 1991), disapproving a large forthwith restitution order which as does the present order point to no factor, that will substantiate the need or the present ability of the Petitioner to pay a $200,000 restitution order immediately. Such the order was an abuse of discretion.

Further, because the record indicates clearly that the Petitioner in this matter is unable to pay the restitution order absent a miracle, or by winning the lottery, the decision below is indeed constitutional error.

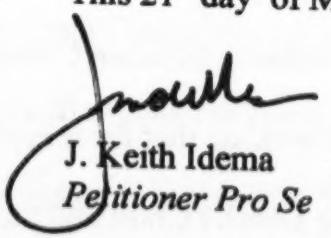
CONCLUSION

As the CONFLICTING circuits agree, Congress did not and due process does not contemplate in the execution of the restitution statute in accord with the provisions of due process of law, such orders must have valid legitimate finding in order to be sustained.

The variance between Circuits and the order of the Court below indicate that the reasoning involved in this matter by the District Court and the Court below is fatally flawed to such an extent that due process of law militates toward the granting of certiorari in this matter to settle this question of law, and remove the conflict between the circuits.

For the reasons expressed herein and to assist in the proper administration of justice it is respectfully requested that this Court grant the petition for certiorari as requested herein.

Respectfully resubmitted,
This 21st day of May 2000,



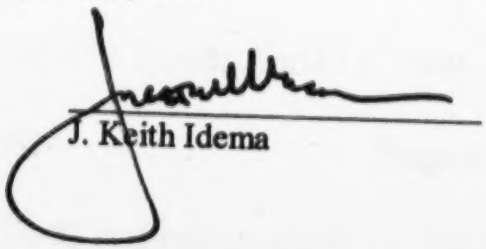
J. Keith Idema
Petitioner Pro Se

CERTIFICATE OF SERVICE

This is to certify that the foregoing and attached document was reserved upon the plaintiff this 27 day of May 2000, by depositing a copy of the same in the United States mail in a postage paid priority mail envelope addressed as follows:

Solicitor General of the United States
Room 56114
Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, DC 20530

Signed this 27 day of May 2000.



J. Keith Idema

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APPENDIX

Exhibit #A- **Page #28**

ORDER of USDC EDNC; Jan 11, 1999

Exhibit #B- **Page #31**

Decision of 4th Circuit; Dec 15, 1999

Exhibit #C- **Page #37**

Decision of 4th Circuit; April 15, 1996

Exhibit #D- **Page #40**

USDC EDNC Judgment; April 11, 1995

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 99-4199

UNITED STATES OF AMERICA

Plaintiff – Appellee,

versus

JONATHAN KEITH IDEMA,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Fayetteville. Terrence W. Boyle, Chief District Judge. (CR-93-2-BO)

Submitted: October 29,1999 Decided: December 15, 1999

Before WILKINS, LUTTIG, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Clifford J. Barnard, Boulder, Colorado, for Appellant, Janice McKenzie Cole, United States Attorney, Anne M. Haynes, John S. Bowler, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36 (c).

PER CURIAM:

Jonathan Keith Idema appeals from a restitution order issued after remand.[1] In his initial appeal from his convictions and sentence for conspiracy to commit wire fraud and fifty-eight counts of wire fraud, we vacated the district court's order of restitution and remanded for the district court to make appropriate findings of fact regarding Idema's financial resources, needs, and earning ability. See United States v. Glosson, No. 94-5669(L), 1996 WL 175053 (4th Cur. Apr. 15, 1996) (unpublished). On remand, the district court reimposed restitution in the amount of $200,000. On appeal, Idema contends that the district court failed to make the requisite findings of fact showing that Idema had the ability to pay restitution.

We have reviewed the district court's order of restitution, as well as the briefs and joint appendix, and we

[1] Although Idema's notice of appeal was filed after the ten-day appeal period in Fed. R. App. P. 4(b), we find excusable neglect clear on the record. Thus, we have jurisdiction to address the merits of Idema's appeal. See United States v. Reyes, 759 F.2d 351, 354 (4th Cir. 1985).

find that the district court did not abuse its discretion. See United States v. Hyppolite 65 F.3d 1151, 1159 (4th Cir. 1995) (standard of review). We thus affirm on the reasoning of the district court. See United States. Idema, CR-93-2-BO (E.D.N.C. Jan. 11, 1999). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

No. 93-02-01-CR-3-BO

FILED
Jan 11 1999

UNITED STATES OF AMERICA)
)
) ORDER
)
JONATHAN KEITH IDEMA)
)

This matter is before the Court on remand from the Fourth Circuit Court of Appeals for Correction of Sentence pursuant to Rule 35(a) of the Federal Rules of Criminal Procedure.[2] On March 14, 1994, defendant was convicted of one count of conspiracy to commit wire fraud and 58 counts of wire fraud and aiding and abetting in violation of 18 U.S.C. §§371 and 1343. Losses incurred by defendant's victims exceeded $269,000.00. Defendant's Presentence

[2] Because this Court must now correct the previous sentence by making appropriate factual findings to support the imposition of restitution, Rule 35(a) of the Federal Rules of Criminal Procedure apples. Accordingly, the correction may be made in defendant's absence. See Fed. R. Crim. P. 43(c)(4).

Investigation Report made factual finds as to, among other things, his ability to pay any court-imposed monetary sanctions. These findings were reached without reference to defendant's present financial condition as defendant had refused to provide this information. Based on the information then available, restitution pursuant to the Victim and Witness Protection Act of 1982 ("VWPA"), 18 U.S.C. §§3663-64, in the amount of $17,703.00 was recommended.

The Court sentenced defendant to 48 months imprisonment and imposed restitution in the amount of $200,000.00. On appeal, the Fourth Circuit affirmed defendant's conviction and sentence in all parts except for the restitution order. On the issue of restitution, the Court of Appeals found that the Court had neglected to make factual findings to support imposition of restitution. It vacated that portion of the judgment and remanded with instructions.[3] See United States v. Jonathan Idema, 83 F.3d 416 Table), 1996 WL 175053, at *2 (4th Cir. 1996) (unpublished).

The government again requested defendant to provide documentation on his financial condition for purposes of determining restitution. He was provided a blank Personal Financial Statement and a waiver on September 24, 1997 which, if signed, would allow the U.S. Probation Office to conduct a credit bureau check and review IRS records. On November 7, 1997, defendant refused to sign the release or provide the requested information. Defendant maintains that he is "under no legal requirement to allow the [Probation Office] or any other federal agency to perform credit checks or background information" on him. Def. Letter of 11/5/97 to USPO.

A court has considerable discretion to order a defendant to make restitution payments to his victims pursuant to the VWPA. United States v. Molen, 9 F.3d 1084, 1085-86 (4th Cir. 1993). In doing so, a court must make specific findings of fact to ensure that the restitution ordered is tailored to accommodate the "defendant's financial

[3] The Court of appeals erroneously stated that this Court had imposed

resources, financial needs, and earning ability." Id., at 1086 (citing United States v. Bruchey, 810 F.2d 456, 459 (4th Cir. 1987)). This requirement may be satisfied either by a court articulating its own findings or by adopting a defendant's presentence investigation report containing the appropriate factual findings. United States v. Castner, 50 F.3d 1267, 1277 (4th Cir. 1995).

At all times, the defendant "bears the burden of establishing by a preponderance of the evidence 'his inability to make restitution.'". Id., at 1277 n.9 (quoting United States v. Morrison, 938 F.2d 168, 172 (10th Cir. 1991)). Failure to comply with requests for financial information may be considered evidence of a defendant's ability to pay. See Jonathan Idema, 1996 WL 175053, at *2.

Defendant's exceptional abilities and transferable work skills,[4] as discussed in his presentence report, provide

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restitution in the amount of $254,485.88.

[4] Defendant has a considerable history of retailing experience, manufacturing, and organizing successful trade shows. After examination of the presentence report, it also appears to the Court that Defendant has no dependents and comes from a successful financial background.

him with the earning capacity sufficient to meet restitution obligations, even if the obligations are to be satisfied over a protracted period of time. Imposition of restitution is thus warranted.

This Court's previously imposed restitution, in the amount of $200,000.00, falls well below the mark, representing total losses incurred by the victims of defendant's extensive fraud scheme. The Court again notes that Defendant has refused in at least two instances to comply with probation officers' requests for financial information. Pursuant to 18 U.S.C. §3664(e), it is the responsibility of Defendant to provide information relating to his financial resources and needs. Defendant's refusal to provide financial information as mandated by 18 U.S.C. §3664 precludes this Court from making a fully informed "hardship" determination on defendant's behalf and justifies the inference that defendant possesses sufficient resources to satisfy the restitution previously imposed. See Castner, 50 F.3d at 1277

n.9. Based on this inference, coupled with defendant's projected earning capacity detailed in his presentence report and the fact that defendant has been gainfully employed[5] since his release on September 16, 1997, the Court finds restitution in the amount of $200,000.00 to be appropriate.

Defendant is hereby ordered to remit payment in full upon issuance of this Order. The restitution payment shall be divided proportionately amount the payees in accordance with the specification set forth in the Court's April 11, 1995 judgment.

SO ORDERED.

This 7th day of January, 1999

SIGNED

Terrance W. Boyle
CHIEF UNITED STATES DISTRICT JUDGE

[5] The Court has been informed that Defendant has been employed as an Investigator by Static Control Components, Inc. of Sanford, North Carolina since late September, 1997.

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JONATHAN IDEMA,
Defendant-Appellant.

No. 94-5947

Appeal from the United States District Court
for the Eastern District of North Carolina, at Fayetteville.
Terrence W. Boyle, District Judge.
(CR-93-2-BO)

Submitted: May 23, 1995

Decided: June 21, 1995

Before MURNAGHAN and MICHAEL, Circuit Judges,
and BUTZNER, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

COUNSEL

Jonathan Idema, Appellant Pro Se. Robert Daniel Boyce, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Jonathan Keith Idema appeals from the order of the district court denying his motion for presentence release. While we affirm the district court's order, we modify the denial to reflect that the motion is denied for lack of jurisdiction.

On March 14, 1994, the jury returned a verdict finding Idema guilty of one count of conspiracy to commit wire fraud and fifty-eight counts of aiding and abetting wire fraud. After the verdict was returned, the trial judge ordered that Idema's bail should be revoked, and Idema was detained pending the judge's review of a transcript of Idema's initial detention hearing, which was presided over by a different judge. After review, the trial judge declined to disturb his detention order. Idema did not appeal that decision.

Instead, Idema filed a motion for presentence release on May 31, which was denied on July 11 on the ground that Idema made no showing that circumstances had changed since the time of the detention order. Idema did not timely appeal that order.

Idema then filed a renewed motion for bail on August 8 and a motion for a new trial on August 19. The last portion of the motion for a new trial again requested presentence release. The court again denied presentence release on the ground that Idema failed to demonstrate a change in circumstances. Idema timely appealed.

Idema's motions of May 31, August 8, and August 19 were essentially motions for reconsideration of the trial court's March 14 order denying presentence release. However, in a criminal case, a district court has no jurisdiction to reconsider an order denying relief once the order sought to be reconsidered becomes final. The trial court's order denying presentence release became final upon expiration of the appeal period on March 24. Therefore, the district court lacked jurisdiction to consider Idema's motion.[1] *See United States v. Breit*, 754 F.2d 526, 530-31 (4th Cir. 1985).

[1]Even if Idema's motion of May 31 is considered the first formal motion for presentence release, the district court still lacked jurisdiction to rule on the instant motion, because the denial of the May 31 motion became final at the expiration of the appeal period on July 21.

To the extent Idema argues that his motion should be construed as a motion for modification of detention conditions, his motion must fail. Once convicted, a person may only make a motion for revocation or amendment of an order of detention if that order was issued by a magistrate or by a person other than a judge. *See* 18 U.S.C. § 3145(b) (1988); 18 U.S.C.A. § 3143(a) (West Supp. 1994). Unlike in the case of pretrial detention, *see* 18 U.S.C.A. § 3142(c)(3) (West Supp. 1994), there is no statutory provision providing for amendment of the conditions of confinement or release once a person has been convicted and detained by a judge. Since a district court judge issued the March 14 detention order and denied the motion for release on July 11, the only review authorized by the Federal Rules of Criminal Procedure, once the order became final, was an appeal of that order. 18 U.S.C.A. § 3145(c) (West Supp. 1994).[2]

Accordingly, we modify the district court's order to reflect that the motion is denied for lack of jurisdiction and affirm the order as modified. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED

[2]Even assuming Idema's August 8 motion could be considered as some sort of motion for modification of detention, it was still properly denied, because no new grounds for release were raised. Idema merely reiterated the arguments in his May 31 motion, which was denied and not timely appealed.

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA
V.
JONATHAN KEITH IDEMA

(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 3:93CR00002-1

ALEXIS PEARCE
Defendant's Attorney

THE DEFENDANT:
[ ] pleaded guilty to count(s) _____.
[ ] pleaded nolo contendere to count(s) _____
which (was) (were) accepted by the court.
[X] was found guilty on count(s) 1 THRU 59
after a plea of not guilty.

Title/Sect	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC §371 & 1343	Conspiracy to commit wire fraud	07/01/91	1
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	2
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	3
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	4
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	5

(offense text continued on page 1.01)

The defendant is sentenced as provided in pages 1 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) _____
and is discharged as to such count(s).
[ ] Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.:_____
Defendant's Date of Birth: 05/30/56

Defendant's Mailing Address:

6036 BARLETT COURT
FAYETTEVILLE NC 28314

Defendant's Residence Address:

6036 BARLETT COURT
FAYETTEVILLE NC 28314

04/11/95
Date of Imposition of Judgment

Terrence W. Boyle
Signature of Judicial Officer

TERRENCE W. BOYLE
UNITED STATES JUDGE
Name & Title of Judicial Officer

4/11/95

I certify the foregoing to be a true and correct copy of the original.
David W. Daniel, Clerk
United States District Court
Eastern District of North Carolina
By: Jennifer Myers
Deputy Clerk

DEFENDANT: JONATHAN KEITH IDEMA
CASE NUMBER: 3:93CR00002 - 1

Title/Sect	Nature of Offense	Date Offense Concluded	Count Number(s)
	(offense text continued from page 1)		
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	6
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	7
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	8
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	9
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	10
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	11
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	12
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	13
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	14
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	15
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	16
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	17
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	18
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	19
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	20
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	21
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	22
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	23
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	24
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	25
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	26
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	27
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	28
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	29
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	30
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	31
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	32
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	33
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	34
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	35
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	36
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	37
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	38
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	39
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	40
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	41
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	42
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	43
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	44
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	45
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	46
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	47
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	48
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	49
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	50
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	51
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	52
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	53
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	54
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	55

18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	56
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	57
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	58
18 USC §1343 & 2	Wire Fraud & Aiding & Abetting	07/01/91	59

DEFENDANT: JONATHAN KEITH IDEMA
CASE NUMBER: 3:93CR00002 - 1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 48 months.

48 months on Count(s): 1 thru 59-shall run concurrently w/each other

[X] The court makes the following recommendations to the Bureau of Prisons:

Court recommends FCI, Butner, NC

[X] The defendant is remanded to the custody of the United States Marshal.
[ ] The defendant shall surrender to the United States Marshal for this district.
[ ] at _____ am/pm on _____.
[ ] As notified by the United States Marshal.

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
[ ] before 2:00 p.m. on _____.
[ ] As notified by the United States Marshal.
[ ] As notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at

_____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years.

3 years as to Count(s): 1 thru 59-shall run concurrently w/each other

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall not possess a firearm or destructive device. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the schedule of payments set forth in the financial obligation portion of this Judgment. The defendant shall comply with the following additional conditions:

The defendant shall not possess a firearm or destructive device.
The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office.
The defendant shall provide the probation office with access to any requested financial information
The defendant shall pay restitution in the amount of $200,000.00 to the vendors listed on the restitution page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINANCIAL OBLIGATIONS

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below:

Count	Assessment	Fine	Restitution
1	$ 50.00	$ .00	$ 200,000.00
2	$ 50.00	$ .00	$ .00
3	$ 50.00	$ .00	$ .00
4	$ 50.00	$ .00	$ .00
5	$ 50.00	$ .00	$ .00
6	$ 50.00	$ .00	$ .00
7	$ 50.00	$ .00	$ .00
8	$ 50.00	$ .00	$ .00
9	$ 50.00	$ .00	$ .00
10	$ 50.00	$ .00	$ .00
11	$ 50.00	$ .00	$ .00
12	$ 50.00	$ .00	$ .00
13	$ 50.00	$ .00	$ .00
14	$ 50.00	$ .00	$ .00
15	$ 50.00	$ .00	$ .00
16	$ 50.00	$ .00	$ .00
17	$ 50.00	$ .00	$ .00
18	$ 50.00	$ .00	$ .00
19	$ 50.00	$ .00	$ .00
20	$ 50.00	$ .00	$ .00
21	$ 50.00	$ .00	$ .00
22	$ 50.00	$ .00	$ .00
23	$ 50.00	$ .00	$ .00
24	$ 50.00	$ .00	$ .00
25	$ 50.00	$ .00	$ .00
26	$ 50.00	$ .00	$ .00
27	$ 50.00	$ .00	$ .00
28	$ 50.00	$ .00	$ .00
29	$ 50.00	$ .00	$ .00
30	$ 50.00	$ .00	$ .00
31	$ 50.00	$ .00	$ .00
32	$ 50.00	$ .00	$ .00
33	$ 50.00	$ .00	$ .00
34	$ 50.00	$ .00	$ .00
35	$ 50.00	$ .00	$ .00
36	$ 50.00	$ .00	$ .00
37	$ 50.00	$ .00	$ .00
38	$ 50.00	$ .00	$ .00
39	$ 50.00	$ .00	$ .00
40	$ 50.00	$ .00	$ .00
41	$ 50.00	$ .00	$ .00
42	$ 50.00	$ .00	$ .00
43	$ 50.00	$ .00	$ .00
44	$ 50.00	$ .00	$ .00
45	$ 50.00	$ .00	$ .00
46	$ 50.00	$ .00	$ .00
47	$ 50.00	$ .00	$ .00

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Count	Assessment	Fine	Restitution
48	$ 50.00	$ .00	$ .00
49	$ 50.00	$ .00	$ .00
50	$ 50.00	$ .00	$ .00
51	$ 50.00	$ .00	$ .00
52	$ 50.00	$ .00	$ .00
53	$ 50.00	$ .00	$ .00
54	$ 50.00	$ .00	$ .00
55	$ 50.00	$ .00	$ .00
56	$ 50.00	$ .00	$ .00
57	$ 50.00	$ .00	$ .00
58	$ 50.00	$ .00	$ .00
59	$ 50.00	$ .00	$ .00
Totals:	$ 2,950.00	$ .00	$ 200,000.00

FINE

The fine includes any costs of incarceration and/or supervision.

[ ] The court has determined that the defendant does not have the ability to pay interest in full.
It is ordered that:
[ ] The interest requirement is waived.
[ ] The interest requirement is modified as follows:

RESTITUTION

Each restitution payment shall be divided proportionately among the payees named unless specified in the priority payment column below. Restitution shall be paid to the following persons in the following amounts:

Name of Payee	Amount of Restitution	Priority Order of Payment
MEMINDEX CORPORATION	$ 84.61	0
CHAMPION AMERICA COMPANY	$ 144.04	0
MILES KIMBALL COMPANY	$ 170.26	0
LIGHTWARE, INC.	$ 215.71	0
CADDYLAK SYSTEMS, INC.	$ 221.54	0
RELIABLE CORPORATION	$ 298.79	0
JANE'S INFO. GROUP	$ 308.86	0
SETON NAME PLATE CORP.	$ 313.93	0
C & H DISTRIBUTORS, INC.	$ 327.67	0
B & D TRADING COMPANY	$ 380.50	0
WAYTEK, INC.	$ 413.96	0
POWER UP! SOFTWARE CORP.	$ 497.28	0
AVID OUTDOOR	$ 562.91	0
TWENTIETH CENTURY PLASTICS	$ 608.03	0
HARRISON SALES COMPANY	$ 746.00	0
TOOLS UNLIMITED	$ 762.21	0
CONSOLIDATED PLASTICS	$ 981.23	0
DAYTIMERS, INC. - ATTN: TOM KEYES	$ 1,026.68	0
RAND MATERIALS HANDLING - EQUIPMENT COMPANY	$ 1,112.12	0

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Name of Payee		Amount of Restitution	Priority Order of Payment
NORTH AMERICAN MOUNTAINEERING	$	1,178.85	0
ALSA CORPORATION	$	1,186.49	0
NATIONAL BAG COMPANY	$	1,205.61	0
FIDELITY PRODUCTS COMPANY, INC.	$	1,490.85	0
JENSEN TOOLS, IN.	$	2,057.63	0
ELIZABETH WEBBING MILLS CO.	$	2,285.98	0
CINCINNATI MICROWAVE, INC.	$	2,289.24	0
NSC INTERNATIONAL	$	2,419.99	0
CRESTHILL INDUSTRIES, INC.	$	2,429.24	0
CHEROKEE PRODUCTS CORPORATION	$	2,562.67	0
USI, INC.	$	2,580.71	0
STIMPSON COMPANY	$	2,628.52	0
BAUSCH AND LAUMB	$	2,732.05	0
VIKING OFFICE PRODUCTS	$	2,765.18	0
SPECIALIZED PRODUCTS CO.	$	3,051.98	0
WESS PLASTIC	$	3,288.36	0
COMB (FINGERHUT)	$	3,630.85	0
CALUMET PHOTOGRAPHIC	$	3,794.00	0
WEARGUARD CORPORATION	$	4,085.68	0
CMC RESCUE, INC.	$	4,663.48	0
PAUL C. BUFF, INC.	$	4,679.60	0
THOMAS TAYLOR & SONS, INC.	$	4,858.41	0
TOP VALUE FABRICS, INC.	$	5,161.14	0
UNITED STATES FORGECRAFT CORP.	$	5,450.99	0
VELCRO USA, INC.	$	5,465.50	0
GAMETIME, INC.	$	5,648.72	0
BARNETT INTERNATIONAL	$	6,187.09	0
AIMPOINT	$	7,244.46	0
ACTION ARMS LIMITED	$	7,540.96	0
QUILL CORPORATION	$	7,652.73	0
ROBERT'S DISTRIBUTORS, INC.	$	15,215.96	0
MESA PHOTO SUPPLY	$	16,042.92	0
SAMY'S CAMERA	$	19,201.86	0
BROOKWOOD ROLL GOODS, INC.	$	22,555.04	0
FEDERAL EXPRESS	$	1,444.30	0
KOLE INDUSTRIES	$	3,601.94	0
MATERIALS CONTROL, INC.	$	236.67	0
UARCO	$	308.02	0

DEFENDANT: JONATHAN KEITH IDEMA
CASE NUMBER: 3:93CR00002 - 1

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) fine costs; (5) interest; (6) penalties.

The total fine and other monetary penalties shall be paid as follows:

[ ] in full immediately.
[ ] in full not later than _____.
[X] in installments which the probation officer shall establish and may periodically modify provided that the entire financial penalty is paid no later than 5 years after release from incarceration, if incarceration is imposed. If probation is imposed, not later than the expiration of probation.
[ ] in monthly installments of $ _____ over a period of _____ months. The probation officer may periodically modify the payment schedule, provided the penalty is paid in full in accordance with the term specified above. The first payment is due 30 days after the date of this judgment. The second and subsequent payments are due monthly thereafter.

All financial penalty payments are to be made to the U.S. Courts Fine Center, P.O. Box 198539, Atlanta, GA 30384, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All of the above payment options are subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

Unless otherwise ordered by the court, any financial penalty imposed by this order shall be due and payable during the period of incarceration, with any unpaid balance to be a condition of supervised release. Any financial penalties collected while the defendant is incarcerated shall be reported by the Bureau of Prisons to the Clerk of the Court and the probation officer. The probation officer shall notify the United States District Court, the Clerk of the Court, and the United States Attorney's Office of the payment schedule and any modifications to that schedule.